

## **BILL ANALYSIS**

H.B. 3886  
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Criminal Jurisprudence  
Committee Report (Unamended)

### **BACKGROUND AND PURPOSE**

Current law provides that an arrest warrant, and any affidavit presented to the magistrate in support of the issuance of the warrant, is public information and requires a magistrate's clerk, beginning immediately when the warrant is executed, to make a copy of the arrest warrant available for public inspection. An arrest warrant is essentially a form prescribed by law, naming the one person to be arrested under the authority of the warrant. Unlike an arrest warrant, a probable cause affidavit is tailored to the particular facts of the alleged offense. When an offense involves more than one suspect, a probable cause affidavit includes facts about all of the suspects, not only the suspect who will be named in one of several warrants issued as a result of the affidavit.

The law does not describe what is meant by "when the warrant is executed." This creates a problem when there are multiple suspects named in the probable cause affidavit because, if multiple warrants are issued on the basis of that affidavit, the first execution of a warrant ostensibly triggers the duty to disclose the contents of the probable cause affidavit. In that event, the other suspects named in the probable cause affidavit may be able to learn details about the investigation pending against them including the identities of witnesses. That places potential witnesses at risk while the other suspects remain at large, and it could compromise the law enforcement agency's investigation and ability to locate the remaining suspects. The purpose of this bill is to eliminate an unintended loophole in current law by clarifying that a probable cause affidavit is not required to be released until an arrest warrant is issued for all suspects named in the affidavit.

H.B. 3886 removes the requirement that a copy of any affidavit presented to a magistrate in support of the issuance of an arrest warrant be made available for public inspection in the magistrate's clerk's office. The bill requires a magistrate's clerk to make an affidavit presented in support of an arrest warrant for more than one person available for public inspection in the clerk's office during normal business hours immediately after the execution of all warrants for which the affidavit was presented in support.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

### **ANALYSIS**

H.B. 3886 amends the Code of Criminal Procedure to remove the requirement that a copy of any affidavit presented to a magistrate in support of the issuance of an arrest warrant be made available for public inspection in the magistrate's clerk's office. The bill requires a magistrate's clerk to make an affidavit presented in support of an arrest warrant for more than one person available for public inspection in the clerk's office during normal business hours immediately after the execution of all warrants for which the affidavit was presented in support.

**EFFECTIVE DATE**

September 1, 2009.